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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, *et al.*,

Defendants.

Case No. 3:25-cv-5687

**DEFENDANTS' EMERGENCY MOTION
TO STAY PENDING APPEAL**

Hon. Trina L. Thompson

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1 **INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 62, the Government moves the Court to stay its partial
 3 final judgment setting aside the termination of the Temporary Protected Status (TPS) designations for
 4 Nepal,¹ Honduras,² and Nicaragua³ pending a decision from the Ninth Circuit on the Government's
 5 forthcoming appeal. Court Order, ECF No. 197.

6 This Court should enter a stay because the Government is likely to prevail on appeal and the
 7 remaining factors favor the government. The Ninth Circuit has already concluded—after briefing and oral
 8 argument—that the Government is likely to prevail on the merits of Plaintiffs' APA challenges to these
 9 TPS terminations in *this* case. ACMS No. 19, *Nat'l TPS Alliance v. Noem*, No. 25-4901 (9th Cir.) (granting
 10 stay pending appeal). And the Supreme Court twice stayed district court orders—first under 5 U.S.C.
 11 § 705 and later under 5 U.S.C. § 706—blocking the Secretary's termination of the 2023 designation for
 12 Venezuela for TPS. *Noem v. Nat'l TPS Alliance*, 145 S. Ct. 2728, 2728-29 (2025) (staying § 705 order);
 13 *Noem v. Nat'l TPS Alliance*, 2025 WL 2812732, *1 (Oct. 3, 2025) (staying partial final judgment). The
 14 Supreme Court's stay orders involved materially identical issues (the reviewability and lawfulness of a
 15 TPS termination), and this Court must follow those informative precedents to resolve this materially
 16 indistinguishable stay request. *See Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025); *Nat'l TPS Alliance*,
 17 2025 WL 2812732, *1 (Oct. 3, 2025) (“Although the posture of the case has changed, the parties’ legal
 18 arguments and relative harms generally have not. The same result that we reached in May is appropriate
 19 here.”); *see also, e.g., Thakur v. Trump*, — F.4th —, 2025 WL 3760650, *5 (9th Cir. Dec. 23, 2025) (“We
 20 are mindful of the Supreme Court’s decision . . . where the Court concluded that similar circumstances
 21 justified a stay.”).

22 Accordingly, because the Supreme Court has indicated that the relevant stay factors favor the
 23 government in the context of TPS terminations, the Ninth Circuit already granted a stay pending appeal
 24 in this case in an earlier posture but based on materially similar arguments, and this Court largely
 25

¹ *Termination of the Designation of Nepal for [TPS]*, 90 Fed. Reg. 24,151 (June 6, 2025).

² *Termination of the Designation of Honduras for [TPS]*, 90 Fed. Reg. 30,089 (July 8, 2025).

³ *Termination of the Designation of Nicaragua for [TPS]*, 90 Fed. Reg. 30,086 (July 8, 2025).

1 reincorporated its already stayed rationale, ECF No. 193 at 3, 13 & n1, the Court should follow those
 2 informative precedents and stay its decision pending appeal. *See Boyle*, 145 S. Ct. at 2654.

3 The Government respectfully requests that the Court rule on the motion no later than 12:01 pm
 4 PDT on January 12, 2026; after that time, the Government intends to seek emergency relief from the Ninth
 5 Circuit. Fed. R. App. P. 8(a)(2); Fed. R. Civ. P. 62(g)(1). Plaintiffs were notified of and oppose the relief
 6 requested in this motion.

LEGAL STANDARD

7 To evaluate whether to issue a stay pending appeal, courts consider four factors: “(1) whether the
 8 stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the
 9 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure
 10 the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556
 11 U.S. 418, 434 (2009). The first two factors “are the most critical[,]” and the final factors merge where the
 12 government is a party. *Id.* at 434-35.

ARGUMENT

THIS COURT SHOULD ENTER A STAY PENDING APPEAL

II. THE GOVERNMENT IS LIKELY TO PREVAIL ON THE MERITS OF ITS APPEAL BECAUSE COURT LACKS JURISDICTION TO GRANT PLAINTIFFS RELIEF

A. The TPS Statute Bars Plaintiffs’ Claims

16 To begin, a stay pending appeal is warranted because the Court erred in concluding that
 17 § 1254a(b)(5) does not independently preclude Plaintiffs’ APA challenge and the government is likely to
 18 prevail on that aspect of its appeal. ECF No. 197 at 12-16. The Secretary’s decision to designate or
 19 terminate a TPS designation implicates sensitive foreign policy judgments. 8 U.S.C. § 1254a(b)(1)(B).
 20 The TPS statute therefore unambiguously precludes courts from second-guessing those determinations:
 21 “There is no judicial review of any determination of the [Secretary] with respect to the designation, or
 22 termination or extension of a designation, of a foreign state” for TPS. 8 U.S.C. § 1254a(b)(5)(A).

23 Section 1254a(b)(5)(A)’s judicial-review bar is broad. First, Congress prefaced “determination”
 24 with the term “any.” 8 U.S.C. § 1254a(b)(5)(A). As the Supreme Court explained “the word ‘any’ has an
 25 expansive meaning.” *Patel v. Garland*, 596 U.S. 328, 338 (2022) (cleaned up). The provision thus captures

determinations “of whatever kind.” *Id.* Second, the phrase “with respect to” has “a broadening effect,” as it “ensur[es] that the scope of [the] provision covers not only its subject but also matters relating to that subject.” *Id.* at 339. When Congress has stripped a court of jurisdiction “in respect to” certain claims, the Supreme Court has construed that as a “broad prohibition.” *United States v. Tohono O’odham Nation*, 563 U.S. 307, 312 (2011). The TPS statute thus plainly commits to the Secretary’s unreviewable authority any determinations relating to any TPS termination. *Id.* Indeed, the Supreme Court held that materially similar jurisdiction-stripping language in the Immigration and Nationality Act was so expansive that it precluded judicial review of factual findings. *Patel*, 596 U.S. at 337-40 (statute barring review of “any judgment regarding the granting of relief” covers “any authoritative decision” on the matter); *see Bouarfa v. Mayorkas*, 604 U.S. 6, 19 (2024) (holding that INA provisions limiting judicial review provide “clear and convincing evidence of congressional intent to preclude judicial review”).

At minimum, § 1254a(b)(5)(A) bars the arbitrary-and-capricious claims on which the Court granted judgment for Plaintiffs. “[I]f a no-review provision shields particular types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary, capricious, or procedurally defective.” *Yale New Haven Hosp. v. Becerra*, 56 F.4th 9, 20 (2d Cir. 2022) (citation omitted); *see Skagit County Pub. Hosp. Dist. No. 2 v. Shalala*, 80 F.3d 379, 386 (9th Cir. 1996) (preclusion provision applies when “procedure is challenged only in order to reverse the individual [unreviewable] decision”). To hold otherwise “would eviscerate the statutory bar, for almost any challenge to [a determination] could be recast as a challenge to its underlying methodology.” *DCH Reg’l Med. Ctr. v. Azar*, 925 F.3d 503, 505-507 (D.C. Cir. 2019).

This Court’s conclusion (copying its previously stayed reasoning, ECF No. 78 at 15, 17) that the phrase “any determination” limits the review bar’s preclusive effect to “the single act of deciding whether the country conditions continue to be met for purposes of designating or terminating TPS,” ECF No. 197 at 13, is unlikely to survive appeal because it is irreconcilable with §1254a(b)(5)(A), which specifies what kinds of determinations the review bar covers: *any* determinations—that is, determinations “of whatever kind,” *Patel*, 596 U.S. at 338—with respect to TPS terminations. *See ACMS No. 19, Nat’l TPS Alliance v. Noem*, No. 25-4901 (9th Cir.). The Court’s analysis also overlooks that the review bar plainly extends to some determinations, such as the effective date or duration of a TPS extension, §1254a(b)(1), (b)(2)(A),

1 that do not necessarily turn on country conditions. *See In Re Svenhard's Swedish Bakery*, 154 F.4th 1100,
 2 1105 (9th Cir. 2025) (discussing the presumption that Congress does not “intend to make any portion of
 3 a statute superfluous” and that a court must “give effect to every word of a statute whenever possible”).

4 The government is equally likely to prevail on its claim that the analysis in *McNary v. Haitian
 Refugee Cntr*, 498 U.S. 479 (1991), forecloses Plaintiffs’ APA claims. ECF No. 197 at 13. The Ninth
 5 Circuit previously held that “the TPS statute precludes review of non-constitutional claims that
 6 fundamentally attack the Secretary’s specific TPS determinations, as well as the substance of her
 7 discretionary analysis in reaching those determinations.” *Ramos v. Wolf*, 975 F.3d 872, 892 (9th Cir.
 8 2020), *vacated upon reh’g en banc*, 59 F.4th 1010, 1011 (9th Cir. 2023).⁴ In doing so, the Ninth Circuit
 9 applied *McNary* to conclude—directly contrary to this Court’s rationale, ECF No. 197 at 13—that
 10 § 1254a(b)(5)(A) bars APA challenges to TPS terminations. *Id.* at 889. Foreclosing judicial review
 11 conforms with the TPS statute, which “does not dictate any substantive guidelines or restrictions on the
 12 manner by which the Secretary may reach her TPS determinations” and does not “set forth or define the
 13 conditions in the foreign state that the Secretary must consider... or how she should weigh these
 14 conditions.” *Id.* at 891; § 1254a(b)(1), (b)(3). *Ramos* also held that Plaintiffs’ principal claim—that the
 15 Secretary was required to review intervening country conditions unrelated to an initial designation—was
 16 barred by § 1254a(b)(5)(A). *Ramos*, 975 F.3d at 893. Given the reasoning in *Ramos*, the government is
 17 likely to prevail on the merits of its claim that § 1254a(b)(5)(A) bars Plaintiffs’ materially identical APA
 challenges.

18 Even the recent decision in *Nat'l TPS Alliance v. Noem*, 150 F.4th 1000 (9th Cir. 2025), *motion to
 19 vacate filed* (Nov. 25, 2025) (“*NTPSA I*”), confirms that the court violated the § 1254a(b)(5)(A) review
 20 bar. *NTPSA I* reasoned that limited review of “[t]he extent of statutory authority granted to the Secretary”
 21 was available to determine whether she can reconsider a TPS extension, but it emphasized that it could
 22 only do so because that question “is not ‘a determination... with respect to the designation, or termination
 23 or extension’ of a country for TPS.” *NTPSA I*, 150 F.4th at 1017 (quoting § 1254a(b)(5)(A)). The Ninth
 24 Circuit also reiterated that “Congress has provided a means for the Secretary to account for changes in

25 ⁴ Although non-precedential, *Ramos* “still carries informational and perhaps even persuasive precedential
 value.” *DHX Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1176 (9th Cir. 2005) (Beezer, J., concurring).

1 country conditions or political priorities: she can terminate TPS[.]” *Id.* at 1021; *see* § 1254a(b)(3)(A)-(B).
 2 Because the Secretary indisputably has authority to terminate TPS designations and did so here within the
 3 statutorily prescribed period, this Court lacks authority to review them and the government is therefore
 4 likely to prevail on appeal. § 1254a(b)(5)(A); *see NTPSA I*, 150 F.4th at 1017; *Ramos*, 975 F.3d at 892.

5 Finally, this Court’s reliance on analogies to the Chinese Exclusion Act, wartime internment, and
 6 cases addressing the plenary power of the Executive and Congress over immigration are misplaced
 7 because statutory interpretation normally begins and ends with the statutory text, and none of the cited
 8 authorities address the unequivocal jurisdiction-stripping language Congress enacted in § 1254a(b)(5)(A).
 9 ECF 197 at 14-15; *see BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (“our inquiry begins
 with the statutory text, and ends there as well if the text is unambiguous”).

10 In sum, because Congress uses clear and unequivocal jurisdiction stripping language, the
 11 government is likely to prevail on its claim that the TPS terminations for Nepal, Honduras, and Nicaragua
 12 cannot be reviewed under the APA and a stay pending appeal is warranted for that merits reason alone.
 13 *See Ramos*, 975 F.3d at 893 (“Our analysis of section 1254a dictates that a claim challenging the
 14 Secretary’s failure to “consider intervening events”—or even her failure to adequately explain why the
 15 agency is no longer considering intervening events when it did so in the past—is essentially an attack on
 16 the substantive considerations underlying the Secretary’s specific TPS determinations, over which the
 statute prohibits judicial review.”).

17 **B. Classwide APA Relief is Barred by 8 U.S.C. § 1252(f)(1)**

18 The government is also likely to prevail on appeal because this Court’s order impermissibly
 19 restrains the Secretary’s operation of the TPS statute in contravention of 8 U.S.C. § 1252(f)(1). ECF
 20 No. 197 at 16-17. Neither of this Court’s rationales for evading § 1252(f)(1)’s prohibition on orders that
 21 “restrain the operation” of covered provisions, including the TPS statute, withstand scrutiny.

22 First, *NTPSA I*’s conclusion that relief is not prohibited “if it affects only agency actions that
 23 exceed the agency’s statutory authority,” ECF No. 197 (quoting *NTPSA I*, 150 F.4th at 1018), directly
 24 conflicts with the Supreme Court’s decision in *Garland v. Aleman Gonzalez* (uncited by this Court and
NTPSA I), which squarely rejected the argument that § 1252(f)(1) is inapplicable if the challenged activity
 25 is allegedly unlawful or inconsistent with the statute. 596 U.S. 543, 552-53 (2022); ECF No. 197 at 16. It

1 goes without saying that the government is likely to prevail where the Supreme Court’s interpretation of
 2 § 1252(f)(1) aligns with the government’s position.

3 Second, this Court’s reliance on *Immigrant Defenders v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025),
 4 is misplaced because that case analyzed interim relief under 5 U.S.C. § 705 and reasoned (incorrectly in
 5 the government’s view) that § 1252(f)(1) was inapplicable to interim relief because it was analogous to a
 6 temporary stay. *Id.*; ECF No. 197 at 17. In contrast, this Court’s order directs the Secretary how to operate
 7 the TPS statute with respect to these three countries on an even more coercive permanent basis. Likewise,
 8 this Court’s reliance on *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010), is misplaced because
 9 the Supreme Court directly addressed that decision and *remanded* for this Court to consider whether
 10 §1252(f)(1) barred “classwide injunctive relief based on . . . constitutional claims” after reversing the
 11 Ninth Circuit’s erroneous statutory interpretations. *Jennings v. Rodriguez*, 583 U.S. 281, 313 (2018)
 12 (citing *Rodriguez*, 591 F.3d at 1120); *but see Al Otro Lado v. EOIR*, 138 F.4th 1102, 1124 n.13 (9th Cir.
 13 2025) (following *Rodriguez*, 591 F.3d at 1119).

14 Thus, the government is likely to prevail on its claim that 8 U.S.C. § 1252(f)(1) bars classwide
 15 relief restraining the Secretary’s operation of the TPS statute.

16 **II. EVEN ASSUMING REVIEWABILITY, THE GOVERNMENT IS ALSO LIKELY TO
 17 PREVAIL ON THE MERITS OF PLAINTIFFS’ APA CHALLENGE TO THE
 18 SECRETARY’S TPS TERMINATIONS**

19 Even if a “narrow” APA claim could somehow survive the judicial-review bar, the Government is
 20 entitled to a stay pending appeal because a strong likelihood of success on the underlying merits is clear.
 21 *See Nken*, 556 U.S. at 434.

22 **A. The Secretary Properly Focused on Whether the Conditions Underlying the TPS
 23 Designations Continued to Exist**

24 The government is likely to prevail on its claim that the Secretary’s periodic review of TPS
 25 designations does not require consideration of intervening country conditions. ECF No. 197 at 43-47.
 26 “Nothing in the language of the TPS statute requires the Secretary to consider intervening events prior to
 27 terminating TPS, or to explain her failure to do so.” *Ramos*, 975 F.3d at 893; *see* 8 U.S.C.
 28 § 1254a(b)(3)(A). This Court’s conclusion that the term “such designation” is ambiguous is unlikely to
 29 survive appeal because the statute specifically refers to “the initial period of designation, and any extended

1 period of designation” and requires the Secretary to “determine whether the conditions for such
 2 designation *under this subsection continue to be met.*” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). The
 3 statute makes doubly clear what “designation” means by making that a separate subsection and delineating
 4 the three separate types of TPS designations. 8 U.S.C. § 1254a(b)(1)(A)-(C).

5 Similarly, the Court’s conclusion that there is a “broader TPS designation” has no textual
 6 foundation and its reliance on legislative history and policy concerns “cannot surmount the plain language
 7 of the statute.” *Truck Insur. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 284 (2024); ECF No. 197
 8 at 44. Moreover, its conclusion that there is no link between the natural disaster underlying a TPS
 9 designation and the ability of a foreign country overlooks 8 U.S.C. § 1254a(b)(1)(B)(i)-(iii) and the
 10 statute’s use of the conjunction “and” between the statutory criteria. And it is “settled” that a court may
 11 not impose “additional judge-made procedural requirements on agencies that Congress has not prescribed
 12 and the Constitution does not compel.” *Garland v. Ming Dai*, 593 U.S. 357, 365 (2021); *see also Little*
 13 *Sisters of the Poor Saints Peter and Paul Home v. Penn.*, 591 U.S. 657, 677 (2020) (courts may not “add[]
 14 terms not found in the statute” or “impos[e] limits on an agency’s discretion that are not supported by the
 15 text”).

16 Thus, as in *Ramos*, the government is likely to prevail on its claim that the TPS statute does not
 17 require the Secretary to consider intervening conditions that have nothing to do with “whether the
 18 conditions for such designation under this subsection continue to be met.” 8 U.S.C. § 1254a(b)(3)(A).

19 **B. The Secretary’s Consideration of Country Conditions Was Not Arbitrary and
 20 Capricious**

21 Consistent with the statute, Secretary Noem considered conditions in Nepal, Honduras, and
 22 Nicaragua, 8 U.S.C. § 1254a(b)(1)(B), and ultimately decided that termination of TPS for each country
 23 was warranted. 90 Fed. Reg. at 24,152-53 (Nepal); 90 Fed. Reg. at 30,088 (Nicaragua); 90 Fed. Reg.
 24 at 30,091 (Honduras). The Federal Register notices show that the Secretary, after consultation with
 25 appropriate agencies of the Government, properly addressed and considered the statutory considerations
 in doing so. Those considerations are whether: (1) an earthquake, flood, or other environmental disaster
 resulted in “a substantial, but temporary, disruption of living conditions in the area affected;” (2) the
 foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals

1 of the state; and (3) the foreign state has requested designation under the TPS statute. 8 U.S.C.
 2 § 1254a(b)(1)(B)(i)-(iii).

3 With respect to Nepal, the Secretary concluded that termination of Nepal's TPS designation, which
 4 was predicated on a 2015 earthquake, was appropriate because the Nepalese government reported that
 5 "88.36% of damaged households have been rebuilt" and had "disbanded" its reconstruction authority after
 6 "most impacted structures were rebuilt." 90 Fed. Reg. at 24,153. The Secretary additionally considered
 7 "improvements to [Nepal's] preparedness and response capacity," "disaster-resilient housing,
 8 infrastructure, and community systems," "economic growth" and increase of "purchasing power of lower
 9 income households," as well as the Nepalese government's demonstrated capacity to accept aliens with
 10 final removal orders over the past five years. *Id.* The Secretary's determination was based on her
 11 consultation with appropriate governmental agencies and review of country conditions evidence. *See* ECF
 12 No. 64 (Nepal administrative record). Indeed, former Secretary of State Blinken recommend that Nepal's
 13 TPS designation be terminated in 2024 based on Nepal's reconstruction progress. ECF No. 64 at 571-79.

14 As for Nicaragua, the Secretary concluded that "notable improvements allow Nicaragua to
 15 adequately handle the return of its nationals." 90 Fed. Reg. at 30,088. The Secretary recognized that
 16 Hurricane Mitch in 1998 was "a sudden catastrophe that caused severe flooding and associated damage"
 17 but that the hurricane was no longer disrupting living conditions or preventing Nicaragua from accepting
 18 the return of its nationals. *Id.* Specifically, Nicaragua had improved its roads, school infrastructure, and
 19 access to healthcare, had a stable economy, and had regularly accepted the return of its nationals over the
 preceding five years. *Id.* Again, the Secretary's determination was based on her consultation with
 appropriate governmental agencies and review of country conditions evidence. ECF No. 63 (Nicaragua
 administrative record).

20 Finally, the Secretary concluded that "the conditions supporting Honduras'" 1999 designation for
 21 TPS were no longer met because the "conditions resulting from Hurricane Mitch no longer cause a
 22 substantial, but temporary, disruption in living conditions" such that Honduras is "temporarily" unable to
 23 "adequately" handle the return of its nationals. 90 Fed. Reg. at 30,091. Specifically, over the intervening
 24 26 years since Hurricane Mitch, the vast majority of Hondurans gained access to water, sanitation, and
 25 electricity and that, with international assistance, "Honduras has strengthened its disaster management

1 capacity at the municipal and national levels[.]” *Id.* Further, given Honduras’s acceptance of aliens with
 2 final removal orders, the Secretary concluded the government’s ability to accept the return of its nationals
 3 was adequate. And, in keeping with the theme, the Secretary’s determination was based on her
 4 consultation with appropriate governmental agencies and review of country conditions evidence. ECF
 No. 62 (administrative record for Honduras).

5 This Court’s conclusion that the Secretary’s TPS terminations were “preordained” despite
 6 satisfying the unreviewable statutory factors is not a cognizable basis for relief under the APA. ECF
 7 No. 197 at 39-43. Agency decisions that are settled by administration policy priorities—even if this were
 8 one—are not vulnerable to arbitrary-and-capricious invalidation solely for that reason. Just the opposite:
 9 The law is clear that “a court may not set aside an agency’s policymaking decision solely because it may
 10 have been . . . prompted by Administration priorities.” *Dep’t of Commerce v. New York*, 588 U.S. 752, 781
 11 (2019). Instead, “[a] change in administration brought about by the people casting their votes is a perfectly
 12 reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs.” *Motor*
 13 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 59 (1983) (Rehnquist, J.,
 14 concurring in part). After all, “[i]t is expected—perhaps even critical to the functioning of government—
 15 for executive officials to conform their decisions to the administration’s policies,” *Ramos*, 975 F.3d
 16 at 897-98, especially, where, as here, determinations regarding foreign country conditions and a country’s
 17 ability to handle adequately the return of its nationals are infused with sensitive judgment calls implicating
 foreign policy.

18 That a different administration may pursue different policy priorities is thus a feature of our
 19 constitutional structure, not a basis for invalidating agency decisions. “[T]he President’s power necessarily
 20 encompasses general administrative control of those executing the laws, through the Executive Branch of
 21 government, of which he is the head.” *Bldg. & Constr. Trades Dep’t v. Allbaugh*, 295 F.3d 28, 32 (D.C.
 22 Cir. 2002 (cleaned up)). And, contrary to the Court’s rationale, it is not unlawful to “implement the
 23 President’s policy directives to the extent permitted by law.” *Sherley v. Sebelius*, 689 F.3d 776, 784 (D.C.
 24 Cir. 2012); ECF 197 at 40 (citing EO 14159). Disagreement with the Secretary’s policy preferences does
 25 not create a viable APA claim, and the government is likely to prevail on that aspect of the Court’s
 reasoning on appeal. ECF No. 197 at 40-41.

1 The preparation of decision memos for the Secretary by her staff, before her ultimate TPS
 2 determinations, does not render her TPS terminations arbitrary or capricious either. ECF No. 197 at 41.
 3 The TPS statute is designed to *automatically* extend in the absence of a determination “whether the
 4 conditions for such designation… continue to be met” at least 60 days before the end of the prior extension.
 5 8 U.S.C. § 1254a(b)(3)(A). In contrast, the Secretary must provide a written notice announcing a TPS
 6 termination. 8 U.S.C. § 1254a(b)(3)(B). There is nothing arbitrary and capricious about the Secretary’s
 7 staff preparing pre-decisional drafts of decision memos for the Secretary’s ultimate consideration—
 8 indeed, such work product is usually *encouraged* as part of the process of making a reasoned decision by
 9 protecting such draft from disclosure in order to encourage “the candid and frank exchange of ideas in the
 agency’s decisionmaking process.” *Nat'l Sec. Archive v. CIA*, 752 F.3d 460, 463 (D.C. Cir. 2014).

10 Critically, there is no dispute that each administrative record contained country conditions
 11 evidence relevant to evaluating whether “the conditions for [each] designation . . . continue to be met,”
 12 particularly where the relevant disasters occurred years or decades ago. 8 U.S.C. § 1254a(b)(3)(A); *see*
 13 ECF No. 62, 63, 64 (administrative records); *see, e.g.*, ECF No. 64 at 571-79 (Secretary of State Blinken’s
 14 2024 recommendation that TPS for Nepal be terminated). The Court’s conclusion that the Secretary relied
 15 on “skewed data” flows from the erroneous premise that the Secretary is required to consider intervening
 16 circumstances, a legal conclusion unlikely to survive appeal for the reasons already discussed. *See*
 17 *Garland v. Ming Dai*, 593 U.S. 357, 365 (2021) (“it is long since settled that a reviewing court is generally
 18 not free to impose additional judge-made procedural requirements on agencies that Congress has not
 19 prescribed and the Constitution does not compel.”) (cleaned up); *supra* Argument § II.A; ECF No. 197
 20 at 41. Relatedly, there is no requirement that the Secretary specifically consult with the Secretary of State,
 21 and the Court never explains how internal consultation within DHS agencies that regularly address
 22 conditions in foreign countries is insufficient. 8 U.S.C. § 1254a(b)(3)(A); ECF No. 197 at 41. And,
 23 tellingly, the Court’s decision never identifies any country conditions traceable to the 1998 hurricane
 24 affecting Nicaragua and Honduras and 2015 earthquake affecting Nepal that the Secretary overlooked.
 ECF No. 197 at 39-43. Thus, even if review was available—it is not, *see* 8 U.S.C. § 1254a(b)(5)(A)—the
 Government is likely to prevail on the merits of any APA challenge to the Secretary’s TPS terminations.

25 The Court’s order should be stayed pending review.

1 **III. THE NON-MERITS CONSIDERATIONS STRONGLY FAVOR A STAY PENDING
2 APPEAL**

3 Irreparable harm to the government, the balance of harms, and public interest also favor a stay
4 pending appeal. *See Nken*, 556 U.S. at 435. Most fundamentally, as the Supreme Court necessarily
5 concluded in an analogous case, the Government and public share an interest in ensuring adherence to the
6 process established by Congress, under which the Secretary has unreviewable authority over TPS
7 designations. *Noem*, 145 S. Ct. at 2728-29 (staying § 705 order); *Noem*, 2025 WL 2812732 at *1; *see*
8 *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (“Any time a State is enjoined
9 by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable
10 injury.”).

11 The government faces irreparable harm from the Court’s judgment because it requires the
12 Secretary to permit thousands of individuals from the subject countries to remain in the country, with work
13 authorization and protection from removal or even initiation of removal proceedings, notwithstanding her
14 reasoned determination that doing so is contrary to the statute. That alone establishes the threat of
15 irreparable harm. The Court’s decision also undermines the Executive Branch’s inherent powers as to
16 immigration and frustrates the statutory scheme, which establishes TPS as a “temporary” form of relief
17 and, when circumstances change, *requires* the Secretary to terminate TPS decisions so that ordinary Title
18 processes can resume. Thus, absent a stay, the Court’s decision represents “an improper intrusion by a
19 federal court into the workings of a coordinate branch of the Government.” *INS v. Legalization Assistance
Project*, 510 U.S. 1301, 1305-1306 (1993) (O’Connor, J., in chambers). That is especially so because the
20 harm here arises in an area that implicates “a fundamental sovereign attribute exercised by the
21 Government’s political departments[.] largely immune from judicial control.” *Fiallo v. Bell*, 430 U.S. 787,
22 792 (1977). Permitting the TPS designations for Nepal, Honduras, and Nicaragua to continue would
23 override the Secretary’s considered judgment that TPS must be terminated because there is not a
24 “substantial, but temporary, disruption of living conditions” associated with a 1998 hurricane (28 years
25 ago) and a 2015 earthquake that prevent aliens from those countries from returning. 8 U.S.C.
§ 1254a(b)(3)(B).

1 Plaintiffs contend that the termination could potentially lead to the loss of employment or health
 2 benefits, as well as possible removal and family separation. ECF No. 17 at 22-23; ECF No. 53 at 13; ECF
 3 No. 73 at 31; ECF No. 197 at 10-11. But the end of TPS's inherently *temporary* protection is not equivalent
 4 to a final removal order under 8 U.S.C. § 1229a, and the loss of associated benefits (such as employment
 5 authorization) is inherent in the statutory scheme Congress designed. *See Sagana v. Tenorio*, 384 F.3d 731,
 6 743 (9th Cir. 2004) (rejecting a due process challenge to a temporary worker program and explaining that
 7 it "violates no constitutional principles by conditioning an alien's entry on his or her willingness to enter
 8 into limited labor contracts."). And, in all events, "the burden of removal alone cannot constitute the
 9 requisite irreparable injury." *Nken*, 556 U.S. at 435. Moreover, Congress has crafted remedies to provide
 10 immigration relief and protection on an individualized basis where it deems appropriate. Nothing
 11 prevented Plaintiffs from pursuing that immigration relief in the decades since they first entered the United
 12 States and received TPS, and nothing prevents them from doing so now. Plaintiffs cannot establish
 13 irreparable harm through a lawful TPS termination by declining to pursue alternative relief that would
 14 ameliorate their alleged harms.

15 The Supreme Court twice stayed district court orders interfering with Secretary Noem's
 16 termination of Venezuela's TPS designation, necessarily concluding that the harm to the Government
 17 when it is prevented from administering the TPS statute outweighs harms to aliens whose temporary status
 18 is terminated (with the requisite 60 day notice period). *Noem*, 145 S. Ct. at 2728-29 (2025); *Noem*, 2025
 19 WL 2812732 at *1. And the Ninth Circuit necessarily reached the same conclusion in this very case.
 20 ACMS No. 19, *Nat'l TPS Alliance v. Noem*, No. 25-4901 (9th Cir.) (granting stay pending appeal). The
 21 harms identified by Plaintiffs are certainly no stronger than those presented there. They are arguably
 22 weaker than the case the Supreme Court considered, in that here the Secretary did not vacate prior
 23 extensions of the designations, but instead merely terminated them when they were already scheduled to
 24 expire. Accordingly, the government is likely to prevail on appeal, and the non-merits considerations
 25 amply justify a stay. *See Boyle*, 145 S. Ct. at 2654. The Court should grant a stay pending appeal.

CONCLUSION

For these reasons, this Court should grant a stay pending appeal.

Dated: January 5, 2026

Respectfully submitted,

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25 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

26 NATIONAL TPS ALLIANCE, *et al.*,

27 Plaintiffs,

28 v.

29 KRISTI NOEM, in her official capacity as
30 Secretary of Homeland Security, *et al.*,

31 Defendants.

32 Case No. 3:25-cv-5687

33 [PROPOSED] ORDER GRANTING
34 MOTION FOR STAY OF THE COURT'S
35 PARTIAL JUDGMENT (ECF No. 197)
36 PENDING APPEAL

1 Before the Court is Defendants' motion for a stay pending appeal of the Court's order setting
2 aside the Secretary's 2025 Termination determinations for Nepal, Honduras, and Nicaragua under the
3 Administrative Procedures Act. ECF No. 197. Having reviewed the motion, IT IS HEREBY ORDERED
4 that the motion for a stay pending appeal is GRANTED.

5
6 Issued this ____ day of January, 2026.

7 _____
8 Trina L. Thompson
United States District Judge
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